

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

CLEANUP AND ABATEMENT ORDER NO. R9-2005-0017

BULEN FAMILY TRUST

**LOVETT'S ONE HOUR DRY CLEANERS
1378 EAST GRAND AVENUE
ESCONDIDO, CALIFORNIA
SAN DIEGO COUNTY**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

JURISDICTION

1. **DISCHARGE OF SOLVENT WASTE.** From 1973 until the present, a dry cleaner facility, currently doing business as Lovett's One Hour Dry Cleaners, has operated at 1378 East Grand Avenue in Escondido, California (Site) on land leased from the Bulen Family Trust. Historically, previous operators of the dry cleaning facility (collectively referred to as Lovett's) caused or permitted waste from its dry cleaning operations, including tetrachloroethylene (PCE) and trichloroethylene (TCE), to be discharged to ground water underlying the Site and to be deposited in soil at the Site from which waste has been and probably will be discharged to ground water. Waste from Lovett's Dry Cleaning operations has caused and threatens to cause conditions of pollution, contamination, and nuisance by exceeding applicable water quality objectives for chlorinated solvent chemical waste constituents.
2. **PERSONS RESPONSIBLE.** Mr. Khosrou Tahbaz currently operates Lovetts and has since 1999. Evidence shows that the release occurred prior to 1999. Unidentified persons who were operators of the dry cleaning facility prior to 1999 may also be associated with the discharge. The Bulen Family Trust has been the fee title owner of the Site since 1963 and leased the Site to Mr. Tahbaz and other dry cleaning operators. The Bulen Family Trust is referred to as "Discharger" in this Cleanup and Abatement Order.

SOLVENT WASTE DISCHARGES

3. **WASTE DISCHARGES.** Dry cleaning operations at the Site include the use of Tetrachloroethylene (PCE) and Trichloroethylene (TCE) as solvents in the dry cleaning process. Site investigations have found elevated PCE and TCE concentrations in soil at 55,000 ug/kg (PCE) at 14 feet below ground surface (bgs) and 260,000 ug/kg (TCE) at 2 feet bgs. Site investigations have also found TCE, PCE, and their associated chemical breakdown products, *cis*-1,2-dichloroethylene (*c*-DCE), *trans*-1,2-dichloroethylene (*t*-DCE) in ground water underlying the Site in concentrations in excess of applicable *Water Quality Control Plan for the San Diego Basin* (Basin Plan) water quality objectives. Chlorinated solvent waste concentrations remain elevated at the Site because to date no cleanup or abatement actions have been undertaken by the Discharger(s).
4. **BASIN PLAN PROHIBITION VIOLATION:** The discharge of chlorinated solvent waste constituents from the Lovett's Dry Cleaners is a violation of Waste Discharge

Prohibition No. 1 of the Water Quality Control Plan for the San Diego Region (9) (Basin Plan). Prohibition No. 1 states "The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited."

5. **SITE INVESTIGATION.** The Discharger(s) have failed to complete site investigations needed to delineate the vertical and horizontal extent of waste from dry cleaning operations in soil and ground water. The Discharger must establish the vertical and horizontal extent of chlorinated solvent waste (PCE, TCE & their degradation products) and any other waste constituents with sufficient detail to identify affected or threatened waters of the state and provide the basis for decisions regarding subsequent cleanup and abatement actions, if any are determined by the Regional Board to be necessary.
6. **CLEANUP AND ABATEMENT ACTIONS.** Efforts to assess the impacts to soil and ground water from this release of waste occurred between 1998 and 2004 and included drilling 18 soil borings and installing 5 ground water monitoring wells. Soil vapor samples were also collected. Soil containing chlorinated solvent waste has not been removed from the Site and no treatment of ground water to reduce in situ dissolved concentrations of chlorinated solvent waste has occurred.

STATUTORY AND REGULATORY FINDINGS

7. **LEGAL AND REGULATORY AUTHORITY.** This Cleanup and Abatement Order is based on (1) Section 13267 and Chapter 5, Enforcement and Implementation commencing with Section 13300 of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.
8. **CEQA EXEMPTION.** This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

ORDER DIRECTIVES

IT IS HEREBY ORDERED, pursuant to Sections 13267 and 13304 of the California Water Code, The Bulen Family Trust (hereinafter the "Discharger") shall comply with the following Directives:

A. CLEANUP AND ABATE DISCHARGES

1. ***Duty to Comply.*** The Discharger(s) shall take all corrective actions¹ necessary to:
 - a. Investigate, cleanup, and abate discharges of chlorinated solvent chemicals (hereinafter waste constituents) at the Site and;
 - b. Achieve compliance with site-specific cleanup levels as prescribed by the Regional Board; and
 - c. Terminate any on-going illicit waste discharges at the Site.

B. SITE INVESTIGATION AND CHARACTERIZATION

1. ***Site Investigation and Characterization Workplan.*** The Discharger shall develop and submit to the Regional Board by **December 9, 2005**, a workplan designed to guide the collection of additional information to produce a complete Site Investigation and Characterization Report described in Directive B.4. The work plan shall contain, but not be limited to, the following:
 - a. ***Conceptual Site Model (CSM).*** The workplan shall contain a conceptual site model (CSM) based on available data on the occurrence of waste constituents in the soil, and ground water, identifying physical location(s) and chemical characteristics of the waste source(s), transport mechanisms, point of exposures, exposure routes, and receptors. The Discharger shall refine the CSM as site characterization data becomes available and submit updated versions of the CSM to the Regional Board.
 - b. ***Extent of Waste Characterization.*** The workplan shall characterize the lateral and vertical extent of waste constituents in soil and ground water to background² levels. Include cross sections showing vertical and horizontal extent of waste concentrations in soil, source(s), lithology, water table, well locations, sample locations, and sample results.
 - c. ***Geological Characterization.*** The workplan shall characterize site geology using vertical cross sections that identify soil types, aquifer heterogeneities, and preferential pathways to pollutant migration.
 - d. ***Hydrogeological Characterization.*** The workplan shall provide documentation of the rate(s) and direction(s) of local ground water flow, in both the horizontal and vertical direction for all water bearing units potentially affected by the waste constituents from the Site.

¹ Corrective Actions include the following phases of cleanup and abatement described in Directives B through E of this Cleanup and Abatement order: (1) Site Investigation and Characterization phase; (2) Feasibility Study phase; (3) Remedial Action Plan phase; and (4) Remedial Action Completion Report phase.

² "Background" means the concentrations or measures of constituents or indicator parameters in water or soil that have not been affected by waste constituents from the Site.

- e. *Ground Water Monitoring Well Installation.* The workplan shall describe (1) the location of existing monitoring wells; and (2) the proposed location of additional monitoring wells needed to characterize the types of waste constituents present, the concentrations of waste constituents and their lateral and vertical extent in ground water to background concentrations. Methods for purging and sampling monitoring wells must be capable of providing representative samples of ground water for detecting the waste constituents of concern. The workplan shall also describe the schedule for installation of any additional ground water, soil pore liquid, soil pore gas, or surface water monitoring devices necessary to comply with this Cleanup and Abatement Order.
 - f. *Presumptive Remedies.* Presumptive remedies shall be considered during the development of the workplan so that data needed for selection and design of remedial alternatives may be collected during site characterization.
 - g. *Field Methodologies.* The work plan shall describe the field methodologies for drilling, soil sampling, ground and surface water sampling, and other activities.
 - h. *Report Completion Schedule.* The workplan shall include a schedule for completion of all activities and submission of a final Site Investigation and Characterization Report described in Directive B.4.
2. ***Workplan Modification.*** The Discharger shall modify the workplan as requested by the Regional Board.
 3. ***Workplan Implementation.*** The Discharger shall begin implementation of the workplan sixty (60) days after submission of the workplan, unless otherwise directed in writing by the Regional Board. The Discharger shall comply with any conditions set by the Regional Board, including mitigation of adverse consequences from cleanup activities.
 4. ***Site Investigation and Characterization Report.*** The Discharger shall prepare and submit a Site Investigation and Characterization Report (Report) to the Regional Board by **April 10, 2006** describing the results of the site investigation and characterization study required under Directive B.1 of this Cleanup and Abatement Order. The Report shall contain a complete analysis of the source, nature, and extent of the waste to background concentrations; and a complete geological and hydrogeological characterization of the Site with sufficient detail to provide the basis for decisions regarding feasible and effective cleanup and abatement technologies and development of preferred cleanup and abatement alternatives.

C. FEASIBILITY STUDY

1. ***Feasibility Study (FS).*** The Discharger shall, using information in the Site Investigation and Characterization Report (Report), prepare a FS. The Discharger shall submit the FS to the Regional Board by **June 9, 2006**. The FS shall evaluate cleanup and abatement alternatives that:

- a. *Achieve Source Control.* The FS shall evaluate alternatives that result in effective control of the source(s) of soluble and dense non aqueous phase liquids (DNAPLs) groundwater pollutants, and control of conditions that contribute to the migration of pollutants.
 - b. *Consider Appropriate Cleanup and Abatement Methods.* The FS shall consider the following cleanup and abatement methods or combinations thereof in the development of Site remediation alternatives.
 - i Source removal and/or isolation;
 - ii In-place treatment of soil or water;
 - iii Excavation or extraction of soil, water, or gas for on-site or off-site treatment,
 - iv Excavation or extraction of soil, water, or gas for appropriate recycling, re-use, or disposal; or
 - v Any other appropriate cleanup and abatement measure capable of attaining the cleanup levels prescribed in Directive C.1.c.
 - c. *Attain Applicable Cleanup Levels.* The FS shall evaluate remedial alternatives, including the cost and effectiveness of each alternative, for the remediation of the waste constituents to attain a range of applicable soil and ground water cleanup levels between background water quality conditions and alternative cleanup levels derived by applying the conditions set forth in Title 23, Chapter 15, Article 5, Section 2550.4. Alternate cleanup levels shall not unreasonably affect present and anticipated beneficial uses of waters and not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Board.
2. ***Recommended Remedial Alternative.*** The FS shall present a recommended alternative for the cleanup or remediation of the waste constituents.

D. REMEDIAL ACTION PLAN

1. ***Remedial Action Plan (RAP.)*** The Discharger shall submit a RAP to the Regional Board by **August 9, 2006**. The RAP shall contain the following information:
 - a. *Implementation Activities.* A detailed description of all activities planned to implement the recommended alternative for remediation of the waste constituents described in the final FS and a schedule for their completion; and
 - b. *Monitoring Activities.* A monitoring program to demonstrate the effectiveness of the RAP. The monitoring program shall be effective in determining compliance with the cleanup levels and in determining the success of the remedial action.

2. **Remedial Action Plan (RAP) Implementation.** The Discharger shall begin implementation of the RAP by **October 9, 2006**, unless otherwise directed in writing by the Regional Board. Before beginning RAP implementation activities, the Discharger shall:
 - a. Notify the Regional Board of its intention to begin cleanup; and
 - b. Comply with any conditions set by the Regional Board, including mitigation of adverse consequences from cleanup activities.
3. **Remedial Action Zone.** The Discharger shall implement remedial action measures that ensure the waste constituents achieve their respective cleanup levels at all monitoring points and throughout the zone affected by the waste constituents, including any portions thereof that extend beyond the Site property boundary.
4. **Implementation Schedule.** Implementation of the RAP shall be completed on a schedule to be established by the Regional Board in a subsequent amendment to this CAO.
5. **Monitoring and Evaluation.** The Discharger shall monitor, evaluate, and report the results of RAP implementation on a quarterly basis.
6. **Modify or Suspend Cleanup Activities.** The Discharger shall modify or suspend cleanup activities when directed to do so by the Regional Board.

E. REMEDIAL ACTION COMPLETION REPORT

1. **Remedial Action Completion Report.** The Discharger shall submit a final Remedial Action Completion Report by **December 11, 2006**, verifying completion of the cleanup and abatement actions taken at the Site. The report shall provide a demonstration, based on a sound technical analysis, that cleanup levels for all waste constituents are attained at all monitoring points and throughout the zone affected by the waste constituents, including any portions thereof that extend beyond the Site boundary.
2. **Regional Board Concurrence.** Upon concurrence with the findings of the Remedial Action Completion Report that cleanup and abatement actions are complete and that compliance with this Cleanup and Abatement Order is achieved, the Regional Board will inform the Discharger and other interested persons in writing that no further remedial work is required at the Site at this time. This written notice shall constitute Regional Board concurrence with the completed remedial actions.

F. PROVISIONS

1. **Waste Management.** The Discharger shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in California Water Code section 13050(m). The Discharger shall, obtain, or apply for coverage under waste discharge requirements or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.
2. **Request to Provide Information.** The Discharger may present characterization data, preliminary interpretations, and conclusions as they become available, rather than waiting until a final report is prepared. This type of on-going reporting can facilitate a consensus being reached between the Discharger and the Regional Board and may result in overall reduction of the time necessary for regulatory approval.
3. **Waste Constituent Analysis.** Unless otherwise permitted by the Regional Board, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Specific methods of analysis must be identified. If the Discharger proposes to use methods or test procedures other than those included in the most current version of "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846*" (U.S. Environmental Protection Agency) or 40 CFR 136, "*Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantification*", the exact methodology must be submitted for review and must be approved by the Regional Board prior to use. The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports submitted to the Regional Board.
4. **Duty to Operate and Maintain.** The Discharger shall, at all times, properly operate and maintain all facilities and systems of treatment, control, storage, disposal, and monitoring (and related appurtenances) which are installed or used by the Discharger to achieve compliance with this Cleanup and Abatement Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities, which are installed by the Discharger only when the operation is necessary to achieve compliance the conditions of this Cleanup and Abatement Order.
5. **Duty to Use Qualified Professionals.** The Discharger(s) shall provide documentation that plans and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code Sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. The Discharger(s) shall include a statement of qualifications and registration numbers, if applicable, of the responsible lead professionals in all

plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

6. ***Electronic and Paper Media Reporting Requirements.*** The Discharger shall submit both electronic and paper copies of all reports required under this Cleanup and Abatement Order including workplans, technical reports, and monitoring reports. The Discharger shall comply with electronic reporting requirements of CCR Title 23, Division 3, Section 3893, including the provision requiring that complete copies of all reports be submitted in PDF format, and include the signed transmittal letter and professional certification.
7. ***Signatory Requirements.*** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger(s) or by a duly authorized representative of the Discharger(s).
 - a. ***Duly Authorized Representative.*** A person is a duly authorized representative only if:
 - i The authorization is made in writing by the Discharger;
 - ii The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
 - iii The written authorization is submitted to the Regional Board.
 - b. ***Changes to Authorization.*** If an authorization under paragraph (a) of this provision is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (a) of this provision must be submitted to the Regional Board prior to or together with any reports or information to be signed by an authorized representative.
 - c. ***Certification Statement.*** Any person signing a document under Provision 7 of this Cleanup and Abatement Order shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

8. **Report Submittals.** All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attn: Site Mitigation and Cleanup Unit

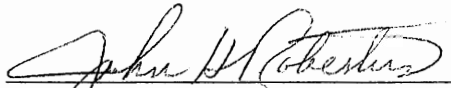
9. **Duty to Submit Other Information.** When the Discharger becomes aware that it failed to submit any relevant facts in any report required under this Cleanup and Abatement Order, or submitted incorrect information in any such report, the Discharger shall promptly submit such facts or information to the Regional Board.
10. **Identify Documents Using Code Number.** In order to assist the Regional Board in the processing of correspondence and reports submitted in compliance with this Cleanup and Abatement Order, the Discharger shall include the following code number in the header or subject line portion of all correspondence or reports submitted to the Regional Board: **SMC: 20-0031.05.**

G. NOTIFICATIONS

1. **Cost Recovery.** The Discharger shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the State Water Resources Control Board. If the Discharger is enrolled in a reimbursement program managed by the State Water Resources Control Board for the discharge addressed by this Cleanup and Abatement Order, reimbursement shall be made pursuant to the procedures established in that program. Any disputes raised by the Discharger over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.
2. **Enforcement Discretion.** The Regional Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Cleanup and Abatement Order.
3. **Enforcement Notification.** The Porter-Cologne Water Quality Control Act commencing with Chapter 5, Enforcement and Implementation, Section 13308, provides that if there is a threatened or continuing violation of a cleanup and abatement order the Regional Board may issue a Time Schedule Order prescribing a civil penalty in an amount not to exceed \$10,000 per day for each day compliance is not achieved in accordance with that time schedule. Section 13350 provides that any person may be assessed administrative civil liability by the Regional Board for

violating a cleanup and abatement order in an amount not to exceed \$5,000 for each day the violation occurs. Alternatively the court may impose civil liability in an amount not to exceed \$15,000 for each day the violation occurs. Section 13383 provides that any person may be assessed administrative civil liability by the Regional Board for violating a cleanup and abatement order for an activity subject to regulation under Division 7, Chapter 5.5 of the California Water Code, in an amount not to exceed the sum of both of the following: (1) \$10,000 for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed \$10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. Alternatively the civil liability may be imposed by the court in an amount not to exceed the sum of both of the following: (1) \$25,000 for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed \$25 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

I, John H. Robertus, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of a Cleanup and Abatement Order issued on August 23, 2005


John H. Robertus
Executive Officer